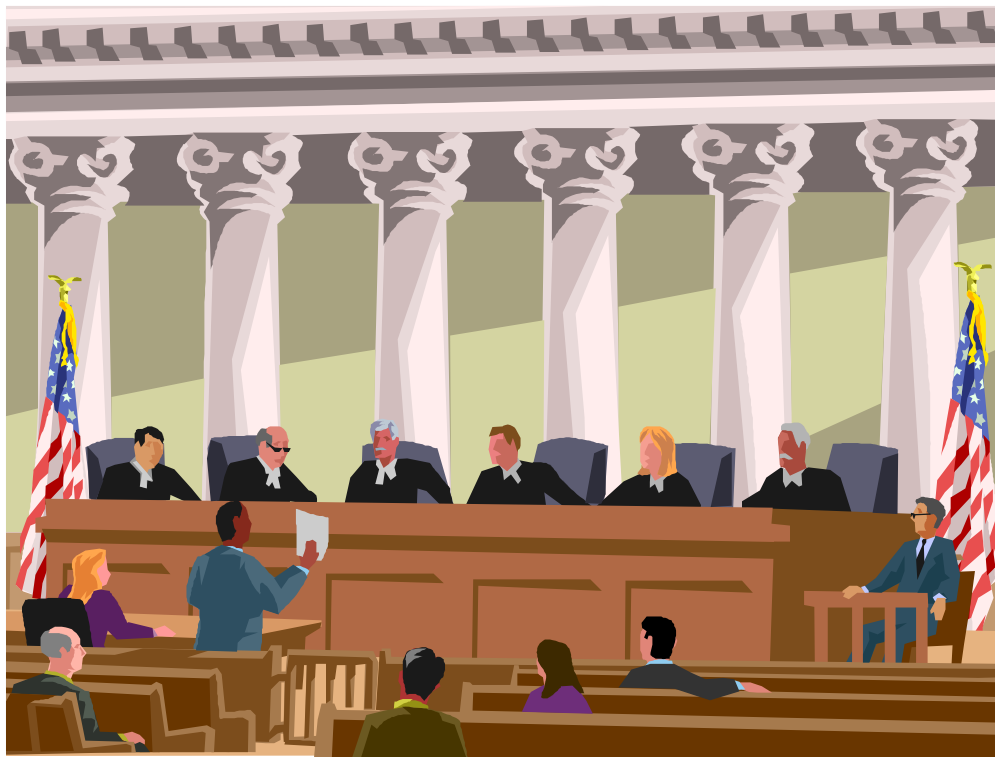


Learning about Child Welfare from the Court Decisions of the U.S. Supreme Court and the U.S. Circuit Courts

Section 4



As we look at court decisions you will see that the line between the search

**Learning more about the legal
guidelines for child welfare work**

Interpretations of Constitutional
Amendments by the
U. S. Supreme Court

and seizure and warrants issues of
the 4th Amendment is not clearly
separated from the due process
issues of the 14th Amendment. All
of these legal issues are very closely
connected in cases that involve child

welfare.

Two Supreme Court decisions were instrumental in establishing parental

autonomy. In the 1920's parents
in Nebraska were hiring Robert
Meyers to teach their children
German, this in opposition to a
statute prohibiting the teaching of
modern foreign languages to grade

**Meyers
v.
Nebraska**

**Pierce
v.
Society of Sisters**

school children. In Meyers v. Nebraska, in 1923, the Supreme Court ruled that the
Constitution protects “not merely freedom from bodily restraint but also the right

of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized in common law as essential to the orderly pursuit of happiness by free men”. This was the first Supreme Court ruling on family autonomy, determining that “it is the natural duty of the parent to give his children education suitable to their station in life.”

On the west coast, Oregon the law required “all normal children ages 8 to 16 who had not completed the 8th grade to attend public school.” The Society of Sisters, in *Pierce v. the Society of Sisters* took *Meyers v. Nebraska* one step further. It argued that this violated parent’s rights to determine where and how a child would be educated. The Supreme Court determined that the law “conflicts with the right of parents to choose schools where their children will receive appropriate moral and religious training, the right of the child to influence a parent's choice of a school, and the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution.”

These rulings clearly supported the rights of parents to educate their children in the ways they saw fit and to enroll their children in schools that provided

academic as well as religious education. The rulings curtailed the state's interference in family autonomy and the education of children.

The Supreme Court did not always rule for uncontrolled family autonomy. In *Prince v. Massachusetts*, they made their first ruling regarding the protection of children. Sarah Prince, aunt and

**Prince
v.
Massachusetts**

guardian to Betty Simmons, was having the nine-year-old girl sell religious pamphlets on the street. This was not in compliance with the Massachusetts' child labor law which prohibited children under the age of twelve from selling, exposing or offering for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description. Mrs. Prince was charged with violating child labor laws, but defended her actions as an exercise of her religious freedom and her right to teach her child religious practices as supported by the decisions of both *Meyers vs. Nebraska* and *Pierce vs. Society of Sisters* that we covered a moment ago.

In 1944, the Supreme Court upheld the conviction stating that children have rights, one of which is the right to safety. In the Supreme Court's response they state that, "To protect children is no mere corporate concern of official authority. It is in the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent citizenship." The Supreme Court felt that children should be protected from the possible danger and influences of the street.

The court determined that states may regulate children's behavior more than the behavior of adults, especially in public activities and in matters of employment. The Court identified several possible ways that children may be 'harmed' by 'street preaching,' including emotional excitement and psychological or physical injury. These issues could put the health or safety of a child at risk.

Prince v. Massachusetts established a child's right to safety and the right to be protected from circumstances that may pose risk to the child.

In 1965, Ginsberg, a luncheon counter owner, sold two “girlie magazines” to

**Ginsberg
v.
New York**

a 16-year-old boy. Ginsberg was convicted of selling materials harmful to a minor. The Supreme Court struck down the vendor’s argument that selling materials that were not harmful or obscene to an

adult, were not harmful or obscene to the 16-year-old. The court ruled in 1968 that they were not only protecting the well-being of the 16-year-old, but they also observed that the right of parents to make decisions for their children is basic to the structure of our society and that the right of the parents is violated when a merchant sells questionable material to a minor.

This ruling recognized a parent’s right to make decisions about the materials to which their children would be exposed when the material is questionable in nature, such as pornography.

Wallis v. Spencer is a significant case in the development of case law regarding child welfare. In 1971 the Wallis children were taken into custody based on a statement that was made to a therapist that a child might possibly be harmed or murdered in a cult ritual.

Wallis v. Spencer

However, there was no evidence that the statement made to the therapist was based on fact. After being taken into custody, the children were given invasive medical examinations to determine if abuse had occurred.

The Wallis's stated that their 14th Amendment rights were violated in six ways. The six ways that they identified are:

1. Parents and children have a constitutional right to live together without governmental interference. That right is an essential liberty interest protected by the 14th Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency.
2. There must be reasonable cause to believe that children face an immediate threat of serious physical harm or death before the seizure of the children.

3. The state may not remove children from their parents' custody without a court order, unless there is specific, articulable evidence that provides reasonable cause to believe that a child is in imminent danger of abuse.
4. There must be information to support that a story of potential abuse is in fact true or likely to happen before children can be removed on the basis of that story.
5. Officials may remove a child from the custody of its parents without prior judicial authorization only if the information provides reasonable cause to believe that the child is in imminent danger of serious bodily injury, and that the scope of the intrusion is reasonably necessary to avert that injury.
6. Parents have a right to be with their children while they are receiving medical attention (or to be nearby if there is a valid reason for excluding them). Children have a corresponding right to the love, comfort, and reassurance of their parents while they are undergoing medical procedures, particularly those that are invasive or upsetting.

The court agreed with the Wallis's and ruled that:

1. In the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural

guarantees of the Constitution... ill considered and improper governmental action may create significant injury where no problem of any kind previously existed.

2. They also determined that the city and the workers who did not have reasonable cause to remove the children were not immune from liability. The factors that compromised their immunity were not acquiring proof or verifying the facts of the case, not having a warrant for removal of the children and not providing the parents with notice

Wallis v. Spencer

- Verify case facts
- Due process to seize children
- Provide parents with notice

of the invasive medical exams.”

3. In child welfare cases that involve the removal of children, caseworkers must verify that the facts purported in the cases are true.

If the facts have been verified,

workers must use due process and they must notify parents before doing any invasive medical procedures.

As was discussed in Section 2, there are four tiers of evidence. Under earlier New York law, the state may terminate, over parental objection, the rights of parents to their natural child upon a finding that the child is "permanently neglected." The New York Family

Santosky v. Kramer

Court Act (622) required that only a "fair preponderance of the evidence" support that finding. Fair preponderance is the least stringent step in the tiers of evidence.

Neglect proceedings were brought in Family Court to terminate parental rights on John Santosky II and Annie Santosky of their three children based on the past finding of neglect.

The Supreme Court held that "the minimum standard of proof in termination of parental rights cases is clear and convincing evidence." The Court noted that "the fundamental liberty interest of parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents." They moved that if a parent is found not adequate to raise their child, clear and convincing evidence is necessary to terminate a parent's rights.

In this case, the Supreme Court set the standard for the minimum standard of proof in termination of parental rights cases to be clear and convincing evidence.

Schall v. Martin was a result of the Commissioner of New York's City

Schall v. Martin

Department of Juvenile Justice
being charged with incarcerating
minors without due process to
protect them from committing more
serious crimes. The youth were all
apprehended in the act of criminal

behavior, and upon the determination that there were no responsible parents able to control the youth, the youth were maintained in custody until court hearings occurred.

The juveniles filed a petition stating that their 14th Amendment right of due process was violated. The court ruling, however, determined that the New York law that allowed minors to be incarcerated to protect them from committing a more serious crime was constitutional. The court stated, "Children, by definition, are not

assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*.”

This 1984 decision by the Supreme Court reinforced the need for the state to act as the parent to a child when there was no parent able or available to protect a child from themselves. Though children’s rights are important, the right to safety for a child is primary.

In 1994 the state of Mississippi terminated the parental rights of M. L. B. to her two minor children. The

children were given to their natural father and his second wife so that they could pursue adoption by the step-mother. The court claimed that they had met their burden of proof

**M.L.B.
v.
S.L.J.**

by "clear and convincing evidence“ when the father and step-mother stated that M. L. B. had not maintained reasonable visitation and was in arrears on child support payments.

The Court, however, neither described the evidence nor otherwise revealed precisely why M. L. B.'s rights were terminated. The mother claimed that the father had not allowed her visitation with the children, though there was a court order decreeing that he do so. When M. L. B. appealed the ruling, her petition was denied because she had not paid \$2,352.36 in fees, even though M. L. B. sought to appeal in forma pauperis.

M. L. B. contended that a State may not, consistent with the Due Process and Equal Protection Clauses of the 14th Amendment, condition appeals from trial court decrees terminating parental rights on the affected parent's ability to pay record preparation fees.

The Supreme Court ruled that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the 14th Amendment."

They further found that the lower court had not documented a "precise rationale" supporting the termination of the mother's rights. They said that "choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society' ...rights sheltered by the 14th Amendment of the U.S. Constitution against the State's unwarranted usurpation, disregard, or disrespect."

The ruling in this case is significant in that it creates criteria in more than one area around the termination of parental rights. First, evidence that supports the reason for termination of a parent's rights must be documented and provide clear and convincing evidence that parental rights should be terminated. And second, a parent's rights cannot be terminated because they are financially unable to pay the processing fees to fight the termination or appeal the termination.

There have been a myriad of decisions regarding child welfare made by

Decisions by State Supreme
Courts and Federal Circuit Courts

State Supreme Courts and Federal Circuit Courts. These cases have shaped child welfare to recognize that:

1. *Child's Best Interest* --

It is in the best interest

of a child to be reared by their natural parents. Termination of parental rights is a very serious decision and should only be pursued if the parent is unfit and termination of parental rights is in the child's best interest.

2. *Exigent Circumstances of Abuse* -- A worker must have a reasonable suspicion that the child is in imminent danger of abuse when taking a child into custody. In other words, exigent circumstances must exist.
3. *Parents Make Medical Decisions* -- Parents have the fundamental right to make medical decisions for their children.
4. *Father's Rights* -- Fathers have rights, even if they are not married to the mother of the child or have custody of the child. However, these rights may be limited depending on whether paternity has been established. These rights may also be dependent upon the role the father has played in the child's life.
5. *Legal Counsel* -- Removals should be done under the advice of legal counsel when possible. There may be exigent circumstances that preclude staffing a case. It is foreseeable that if you do not have time to obtain a warrant, you may not have time to staff the case either.
6. *Warrants* -- Warrants must be obtained prior to a removal when taking time to get a warrant will not put the child at risk of further abuse or neglect.
7. *Pre-removal Hearing* -- A pre-removal hearing is held after the AAG files a verified petition for expedited placement in temporary custody.

A hearing is scheduled for 72 business hours. At the hearing the court determines whether sufficient evidence exists to remove the child.

8. *Parents Entitled to Notice and Hearings* -- Where exigent circumstances is an issue in a removal, or a warrant has been obtained, parents are entitled to notice and a court hearing within 72 business hours. When a pre-removal hearing is held, the notice is given prior to the removal.
9. *Planning* -- Child and Family Plans are intended to change attitudes and behavior. If a reasonable time has passed, and attitudes and behaviors do not change, termination of parental rights maybe appropriate. Children should not remain in limbo indefinitely; they have a right to permanency. At the same time, plans are the guide for parents' reunification with their children and should be created with the family in a timely manner. The family should be provided with every opportunity to clearly understand the plan and how to create success in achieving the plan goals. In addition, families should be provided support, linked with appropriate services, and educated with success in mind.
10. *Reunification and Incarceration* -- When a parent is incarcerated, the court may order reasonable reunification services unless it would be

detrimental to the child. Reunification is still limited to the 12 months from the date of removal limitation set by ASFA and Utah law.

11. *Family Integrity does not mean 'no investigations'* -- The right to family integrity clearly does not include a constitutional right to be free from child abuse investigations.
 12. *Investigations Ultimately Protect Children* -- Investigations that allege child abuse are necessary to protect children. Decisions of state and federal courts have verified the need for child welfare services. They have determined that the only way that states can ensure parents have not exceeded the limits of their responsibilities to discipline their children is to permit public officers to investigate alleged incidents of child abuse.
 13. *Investigations must be made--some may prove baseless* -- There is no way for the government to protect children without making inquiries that in many cases do turn out to be baseless.
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SMILE - You have finished Section 4!!!!

Now complete the quiz questions for this section.

Quiz Questions

1. Parents have the right to educate their children in Academics and Religion.

True or False
2. The state has the right and responsibility to step into a parent's pervue of raising their children when the child's _____ is at risk.
3. When children are taken into care without a warrant, what must happen speedily (which answer is incorrect?):
 - a. A court hearing must be scheduled
 - b. Completion of a Casey Life Skills Assessment
 - c. Parents given notice of their rights
 - d. Parents given notice of the time and place of the court hearing
4. _____ is the standard of evidence for the termination of parental rights when ICWA is not involved.
5. Termination of parental rights must be based on:
 - a. Whether the parents can afford the court costs
 - b. How attached the children are to the resource family
 - c. Evidence supporting that the termination is in the best interest of the child
 - d. Evidence of parental drug use
6. An investigation that proves to be groundless is a violation of a parent's rights.

True or False
7. Reunification to incarcerated parents occurs under the following circumstances (mark all that apply):
 - a. The reasons that the parent is incarcerated
 - b. The parent is incarcerated for less than 12 months
 - c. If the jail will allow the child to see the parent
 - d. When it is in the best interest of the child

Check back to make sure that your responses are correct so that you have the answers and are prepared to respond correctly to the quiz at the end of Section 4 of this training.

Now that you have completed the fourth section of this training, print out the Participant Workbook for the fifth section, Application of Case Law and Constitutional Amendments to Child Welfare Work, and then select the link on the training menu to complete the training.